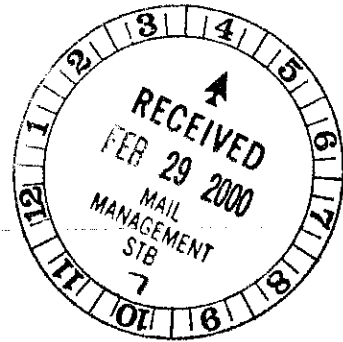
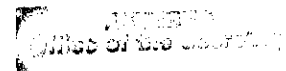


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Goldman  
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February 28, 2000



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VIA HAND DELIVERY

The Honorable Vernon A. Williams  
Secretary  
The Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Re: Ex Parte No. 582 -- Public Views on Major Rail Consolidations

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of the text of the statement of Robert S. Kaplan. Also enclosed is a 3.5 inch disk, containing the statement in WordPerfect 9.0 format.

Please date-stamp the enclosed extra copy of the statement and return it to the messenger for my files.

Sincerely,

*Robert S. Kaplan*

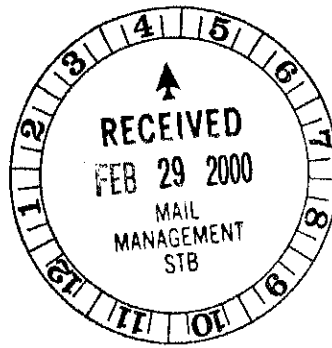
Robert S. Kaplan

Enclosures

**VERIFIED STATEMENT**

**OF**

**ROBERT S. KAPLAN**



I am Robert S. Kaplan, Co-Head of the Investment Banking Division of Goldman, Sachs & Co. I have held this position since 1998. I began my career in investment banking in 1983 following my receipt of a Master's Degree from the Harvard Graduate School of Business Administration. I held various positions at Goldman Sachs from 1983 until 1998, including head of the Corporate Finance Department.

During my tenure with Goldman Sachs, I have worked on a broad range of financial transactions for public and private corporations, including mergers and acquisitions, spin-offs, restructurings, recapitalizations and the raising of debt and equity capital, both in the United States and abroad.

Goldman, Sachs & Co., founded in 1869, is an investment banking firm that is continually engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements, and valuations for estate, corporate and other purposes. Goldman has substantial experience in the merger and acquisition field having announced 431 general merger deals totaling \$1.4 trillion in calendar 1999. More specifically, Goldman Sachs has been engaged on many of the most significant railroad transactions of the past decade, including but not limited to, the proposed Burlington

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Northern Santa Fe/ Canadian National combination, Canadian National's 1998 acquisition of Illinois Central, Wisconsin Central's 1996 acquisition of four British rail freight businesses, and Santa Fe Pacific's 1995 combination with Burlington Northern.

I am submitting this statement in response to the Surface Transportation Board's request for comments regarding the appropriate regulatory position to be taken by the Board on the subject of major railroad consolidation in light of the present and future structure of the North American railroad industry.

Companies evaluate the potential of entering into a merger transaction on several levels: operational, financial and regulatory.

At the operational level, the companies evaluate whether a combination would increase the efficiency and scope of the combined company. This analysis embraces factors which include, but are not limited to, the impact on customers, suppliers and employees, as well as the ease with which the two firms can be integrated. Moreover, it requires an assessment of the synergies that could be expected from the combination.

The financial component includes assessment of the relative value of the companies at the time of the announcement, an evaluation of the future prospects and synergies of the two companies and an analysis of the financial strength of the combined entity. The last element embraces an analysis of the need for, and ease of access to, the capital markets.

The regulatory analysis is centered around an assessment of the likelihood of approval, any barriers to approval and the delay associated with such approval.

### **Lengthened Regulatory Decision Making Period and Increased Regulatory Hurdles**

Increasing the period between announcement and ultimate approval of a merger renders the financial analysis more problematic. In a merger with a short regulatory approval period, the analysis is based upon the current condition of each company (or its near-term prospects). Although longer-term prospects are an important component of the evaluation, the current condition serves as a critical element of the overall foundation of the assessment.

By contrast, where the regulatory process is relatively longer, each company, and its respective debt and equity holders, is forced to make assumptions regarding the operational and financial performance of the proposed merger partner for the period extending from announcement to approval. This problem is compounded by the fact that each company has limited, if any, control over the strategic decisions and management of its proposed partner during the approval period. As the eventual combination date is pushed further into the future, projections become increasingly speculative and, therefore, less reliable. This affects both the market analysis and the regulatory analysis of the costs and benefits of the transaction for all of the stakeholders who have an interest in the transaction—customers, employees and security holders.

Comparisons of the relative value of the two companies become dependent not merely upon the relative position and strength of each company, but also projected performance over a period of months or years. This includes an evaluation of the vulnerability of each company individually to external factors, including economic conditions, competition and the efficacy of

management. This renders analyses of the impact of the combination and likely performance of the combined entity more difficult and, thereby, diminishes the appeal of any such combination.

Similarly, assessments of the financial strength of each company become increasingly speculative. Factors including balance sheet strength, creditworthiness, investor perceptions and capital markets access must be estimated for each company during the regulatory period and then projected into the future for the combined entity. This problem is exacerbated in cyclical industries that are dependant upon less predictable movements in the economy at large. Moreover, recent volatility in the capital markets (both equity and debt) highlight the challenges associated with assessing investor views and, by extension, the ability of the individual companies and combined entity to secure necessary capital in the future. Finally, increasing the approval period pushes the realization of synergies further into the future. This diminishes the present value of those synergies and, therefore, makes any combination less attractive to the companies involved.

#### **Increased Regulatory Uncertainty**

An expanded regulatory approval process, which is relatively less predictable, would have a similar dampening effect on merger prospects in regulated industries. Such uncertainty impacts both the companies' ability to make strategic and financial decisions and investors' ability to evaluate the prospects of the individual companies. During the period of uncertainty, each proposed merger partner's ability to effectively plan is severely restricted by the unpredictable outcome of the regulatory process. Evaluation of other strategic alternatives becomes very challenging, as any such analysis must incorporate both the possibility that the

company will merge at the conclusion of the period and the possibility that it will remain an independent entity. This effectively precludes any strategic move, other than those few that would be clearly beneficial in each scenario. Similarly, decisions to raise debt or equity, reduce debt on the balance sheet, engage in share repurchase programs and modify dividend policy, are dependent upon the strategic direction of a company. Thus, the uncertainty associated with merger approval makes such decisions challenging. The result can be a company with a capital structure inappropriate to meet the continually evolving demands of its industry, its customers, the economy, and the capital markets.

Similarly, uncertainty associated with merger approval increases risks to investors who are faced with uncertainty as to whether they are financing the individual entity or a portion of the eventual combined entity. Investors' conclusions that such investments have a higher risk profile than either individual company, or the merged entity, may result in more expensive financing costs for each partner.

### **Conclusion**

A more restrictive approach to the analysis of consolidation, considered in isolation of other factors, would likely diminish the willingness of companies to engage in such combinations, even in circumstances where such combinations would be in the best interest of the railroads, their customers and employees and the public. Moreover, the sheer uncertainty introduced by a possible change, and even more clearly by an actual change, in such processes or such criteria is likely to diminish industry participants' willingness and ability to merge.